UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DALMATIA IMPORT GROUP, INC., Plaintiff, v. FOODMATCH, INC., *et al*. Defendants.	Case No. 16-CV-0933

[PROPOSED] ORDER

This matter came before the Court on Plaintiff Dalmatia Import Group, Inc.'s Motion for (1) Preliminary Injunction Against FoodMatch, Inc. and Lancaster Fine Foods, Inc. for Trademark Counterfeiting and Trademark Infringement and (2) Expedited Discovery.

Having reviewed Dalmatia's Motion and supporting papers, the Court makes the following findings of fact and conclusions of law.

1. Dalmatia owns an incontestable federal registration for the mark DALMATIA for fig spread, Registration No. 2,918,383.

2. Dalmatia also owns an incontestable federal registration for a jar configuration for fig spread, Registration No. 3,667,616. The registered jar configuration is shown below:

3. Defendants FoodMatch, Inc. and Lancaster Fine Foods, Inc. distributed and sold fig spread products bearing Plaintiff's federally registered DALMATIA trademark and in

Plaintiff's federally registered jar configuration which products Dalmatia had rejected or had not approved. These unauthorized DALMATIA fig spread products were sold and distributed to sub-distributors, retailers, and other customers and are available for purchase at retail throughout the United States.

4. Dalmatia is very likely to succeed in showing that Lancaster and FoodMatch have used and are continuing to use "counterfeits" of Plaintiff's DALMATIA trademark and jar configuration in connection with the manufacture, sale, distribution, advertising, and promotion of fig spread which was rejected by Dalmatia or which Dalmatia did not authorize, as set forth in Dalmatia's Amended Complaint, Memorandum of Law in support of this Motion, and accompanying declarations and exhibits. Plaintiff has a very high likelihood of prevailing on its trademark counterfeiting and trademark infringement claims under the Lanham Act.

5. Lancaster's and FoodMatch's manufacture, sale, distribution, advertising, and promotion of unauthorized fig spread under Plaintiff's DALMATIA trademark and in Plaintiff's registered jar configuration will cause Dalmatia immediate and irreparable injury if the relief requested is not entered. Plaintiff will suffer the loss of control over the goodwill and reputation associated with its well-known and valuable DALMATIA trademark and registered jar configuration, and consumers and others in the trade will continue to be deceived into thinking that Plaintiff approved the unauthorized fig spread products bearing Plaintiff's federal registered marks. Unless the Court enters the preliminary injunction and recall order, Plaintiff's goodwill and reputation in its marks will continue to be irreparably harmed for many months or years because of the widespread extent of the counterfeiting and trademark infringement, which is on retailers' shelves throughout the country and which product has a shelf life of up to three years.

6. Plaintiff requested that the labels and jars be returned it, but Defendant Lancaster refused to return them and used them to manufacture counterfeit DALMATIA fig spread products. Lancaster and FoodMatch or persons acting in concert with them will likely destroy, move, conceal, or otherwise make inaccessible the counterfeit DALMATIA marks and counterfeit jar configuration and the means for manufacturing counterfeit DALMATIA fig spread, including in particular the federally registered jar configuration and the DALMATIA product labels.

7. The harm to Dalmatia from denial of the requested preliminary injunction, recall and seizure order far outweighs any possible harm to Lancaster and FoodMatch, who have engaged in willful trademark counterfeiting and trademark infringement under the federal Lanham Act.

8. Entry of a seizure order is necessary to stop future counterfeiting and preserve critical evidence.

9. Grant of this preliminary injunction, recall, and seizure order are in the public interest.

10. Expedited discovery will enable Dalmatia to ascertain the scope of Lancaster's and FoodMatch's sale of counterfeit DALMATIA products and to thereby ensure that a complete and comprehensive recall of all counterfeit DALMATIA fig spread products sold and distributed by Lancaster and FoodMatch takes places immediately.

THEREFORE, Dalmatia's motion for preliminary injunction, recall, seizure, and expedited discovery is GRANTED, and IT IS HEREBY ORDERED THAT:

I. *Preliminary Injunction*

1. Defendants FoodMatch, Inc. and Lancaster Fine Foods, Inc., their employees, owners, agents, officers, directors, attorneys, representatives, affiliates, subsidiaries, successors, assigns, and all those in active concert or participation with them who receive notice of this Court's order, are hereby immediately enjoined from:

a. Using Plaintiff's registered DALMATIA mark or Plaintiff's registered jar configuration, whether alone or in combination with any other word(s), term(s), designation(s), mark(s), or design(s), or any confusingly similar marks or configurations; and

b. Selling, distributing, promoting, shipping, manufacturing, labelling, packaging or advertising goods bearing Plaintiff's federally registered DALMATIA mark and product configuration or any confusingly similar marks or configurations.

2. Defendants FoodMatch, Inc. and Lancaster Fine Foods, Inc. and those persons under their control or in active concert or participation with them are immediately enjoined and restrained from destroying, moving, discarding, or disposing of in any manner any products, jars, labels, or equipment, relating to the manufacture, sale, and distribution of counterfeiting DALMATIA fig spread.

3. Defendants shall file the Court and serve upon Dalmatia's counsel within 30 days of the entry of this Preliminary Injunction Order, a report, in writing and under oath, setting forth the manner and form in which they have complied with the requirements of this Order.

II. Recall of Rejected and Unauthorized Goods

4. Defendants FoodMatch, Inc. and Lancaster Fine Foods, Inc. and those persons under their control or in active concert or participation with them, shall recall all cases and 8.5-

ounce jars of fig spread bearing the DALMATIA trademark or in Dalmatia's jar configuration for its DALMATIA fig spread that was manufactured by Lancaster on (1) October 26 and 27, 2015, (2) after November 5, 2015, and (3) product stamped with no production code. Defendants shall bear all costs that they incur in effectuating this recall.

5. In recalling these products, Defendants must issue a written notice with the below verbatim language:

> These products are being recalled because a Court has determined that FoodMatch, Inc. and Lancaster Fine Foods, Inc. sold and distributed these jars of fig spread under the DALMATIA brand without Dalmatia Import Group, Inc.'s approval or authorization for these specific jars of product to be sold under its mark. This recall is being ordered solely because of the unlawful conduct of FoodMatch and Lancaster Fine Foods and through no fault of Dalmatia Import Group, Inc.

6. Within 5 days of this Order, FoodMatch and Lancaster must produce an itemized list of the product that they will recall that includes the quantity of product to be recalled, the dates that the recalled product was produced, the list of distributors, subdistributors, retailers, or customer to whom they sold or distributed such product, and the production codes, batch numbers, or other tracking number for all such product.

III. Seizure of Counterfeit Goods and Means of Counterfeiting

7. Because Plaintiff has demonstrated sufficient cause in light of Defendants' sale and distribution of counterfeit DALMATIA fig spread and have the means to continue such unlawful conduct, it is hereby ORDERED that a federal law enforcement officer, assisted by one or more attorneys or agents of Plaintiff, are hereby directed and authorized to seize, impound, and deliver to Plaintiffs or their representatives, within five calendar days of the entry of this Order:

a. Any and all goods bearing Dalmatia's DALMATIA trademarks, including without limitation, labels, tags, jars, packaging, advertisements;

b. Any and all means for making goods bearing Dalmatia's DALMATIA trademarks, including:

(i) From Lancaster Fine Foods: (1) reconditioned Tampco Bundler w/ integral shrink tunnel; (2) SST slider bed conveyer; (3) LSI model 1361 Tamp labeler; (4) custom labeling system used for DALMATIA labels to wrap label around lid; and (5) all other equipment paid for by DALMATIA that was used to manufacture fig spread under the DALMATIA marks, and

(ii) From both Defendants: (1) all desktop and laptop computers, hand-held computer devices (e.g., iPhone, Blackberry, iPad), mobile phones, hard drives, zip drives, CD-ROMS, DVDs, computer disks, and all other types of computer storage devices; and (2) any and all business records, invoices, hard copy and electronic correspondence, books or accounts, receipts or other documentation relating to or referring in any manner to the manufacture, sale, distribution, promotion, or advertising of DALMATIA fig spread

8. The items to be seized are located at the offices of Defendants located at:

(1) 575 8th Avenue, 23rd Floor, New York, NY 10018

(2) 2316 Norman Road, Lancaster, Pennsylvania 17601

(3) 2320 Norman Road, Lancaster, Pennsylvania 17601

9. The law enforcement officers effecting this seizure shall employ whatever reasonable force is necessary to enter the premises owned, leased, or controlled by Defendants,

specified above, and to inspect the contents of any computers, rooms, vehicles, closets, cabinets, containers, cases, desks, boxes or documents located on, in, or around the premises specified above.

10. To enforce compliance with this Order, counsel for Dalmatia and their agents may accompany the law enforcement officer(s), and that they may seize the aforementioned items, that the law enforcement officer(s), Dalmatia's counsel, and their agents shall inventory and tag all items so seized, and that such items shall be stored at secure locations to be designated by Dalmatia's counsel. Dalmatia's counsel or their agents shall be substitute custodian of all materials so seized.

11. The seizure ordered herein may be photographed or videotaped for the purpose of authenticating and obtaining evidence and preventing any controversy regarding the activities and events occurring during the seizure.

12. Alternatively, Defendants must immediately deliver up to this Court all items set forth in Paragraph 8 of this Order.

IV. Expedited Discovery

13. Within one day of the entry of this Order, Dalmatia shall serve the discovery attached as Exhibits O to R its Motion.

14. Defendants shall respond to Dalmatia's requests for production of documents and interrogatories within 14 days of being served.

15. The 30(b)(6) depositions of Lancaster and FoodMatch, on the topics set forth in the Notices of Deposition attached as Exhibits S to T of Dalmatia's Motion, shall take place no more than seven days after Defendants respond to Dalmatia's requests for production and interrogatories, unless the parties otherwise agree.

V. No Bond

16. Because Dalmatia has demonstrated an overwhelming likelihood of prevailing on the merits of its trademark counterfeiting and trademark infringement claims, the Court in its discretion orders that Dalmatia need not post security under Fed. R. Civ. 65(c).

SO ORDERED.

Dated: ___________________ ____

UNITED STATES DISTRICT JUDGE